

The Examiner is reminded that a restriction is *only* proper if it can be shown that: (1) the claims belong to separate classifications; (2) a different field of search would be required; or (3) the claims have a separate status in the art (*e.g.*, as shown by citing patents that are evidence of such separate status or by showing a separate field of search) (MPEP 808.02). One of these three criteria *must* be established to support a restriction. Applicants assert that the Examiner *has not established any of these criteria* in support of the pending restriction requirement.

The first criteria clearly does not support the pending restriction. Indeed, the Examiner cites to the *very same* class (435) and subclass (69.1) as being dispositive to the search for each of the two allegedly different groups of claims. That is to say, given the Examiner admits the very same class and subclass of art will be searched *for both Groups I & II*, it is impossible for the Examiner to differentiate the allegedly "distinct inventions" in terms of separate classifications.

The second criteria also clearly does not support the restriction as the Examiner has failed to provide any evidence which suggests that a different field of search would be required. Therefore, the Examiner has made no showing (beyond bald conclusion)¹ that the search and examination of *all pending claims* would be unduly burdensome.


The third criteria has also not been met because the Examiner has, once again, not provided any *evidence* to support the argument that any of the pending claims have a separate status in the art.

¹ That is to say the Examiner merely states, "the examination of all groups would require different searches in the scientific literature and would require the consideration of different patentability issues." See, Office Action mailed November 20, 2002, page 2, paragraph 2. The Examiner, however, cites no authority (in the literature) to support this proposition. Therefore, absent corroboration in the literature, the Examiner's statement should not qualify as "evidence".

CONCLUSION

For the reasons set forth above, the Applicants respectfully submit the claims as filed should not be restricted. Nonetheless, should the Examiner disagree, Applicants elect for initial examination the claims of Group I (e.g. Claims 1-6 and 13-18). If a telephone interview would aid in the prosecution of this application, Applicants encourage the Examiner to call the undersigned collect at 617.252.3353.

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